

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	McKenney et al.		
SERIAL NO.:	09/753,062	Group Art Unit:	2111
FILING DATE:	December 28, 2000		
FOR:	Quad Aware Locking Primitive	Examiner:	Huynh, Kim T.

Petition Under 37 C.F.R. §1.181(a)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request removal of the abandonment of the above-referenced application and reinstatement of the pending status thereof. A Notice of Abandonment was issued on December 20, 2007 for the above-identified application for failing to seek a court review of the decision of the Board of Patent Appeals and Interferences. The Notice of Abandonment states that no claims were allowed in the decision issued by the Board of Patent Appeals and Interferences in the decision dated September 27, 2007. Applicants respectfully disagree. The Decision on Appeal dated September 27, 2007 was affirmed-in-part, indicating that there are dependent claims that are allowable. The Manual of Patent Examining Procedure (MPEP) §1214 outlines the action that should be taken by the Examiner when dependent claims are found to be allowable. MPEP §1214 states in relevant part as follows:

If the Board or court affirms a rejection against an independent claim and reverse all rejections against a claim dependent thereon, after expiration for

further appeals, the examiner should proceed in one of two ways:

- (1) Convert the dependent claim into independent form by examiner's amendment, cancel all claims in which the rejection was affirmed, and issue the application; or
- (2) Set a 1-month time limit in which appellant may rewrite the dependent claims(s) in independent form.

MPEP §1214. However, the outlined procedures were not followed in the above-referenced application.

The MPEP further provides a sample form paragraph ¶12.119.01 to be employed by the Examiner in such a situation:

The Board of Patent Appeals and Interferences affirmed the rejection(s) against independent claim(s) [1], but reversed all rejection against claim(s) [2] dependent thereon. There are no allowed claims in the application. The independent claim(s) is/are cancelled by the examiner in accordance with MPEP §1214.06. Applicant is given a ONE MONTH TIME PERIOD from the mailing date of this letter in which to present the dependent claim(s) in independent form to avoid ABANDONMENT of the application. NO EXTENSION OF TIME UNDER 37 C.F.R. §1.136(A) WILL BE GRANTED. Prosecution is otherwise closed.

In this specific case, the rejection of claims 1-10, 13-19, and 22-29 were affirmed, and claims 11, 12, 20, 21, 30, and 31 were reversed, thereby indicating the allowable subject matter of dependent claims 11, 12, 20, 21, 30, and 31. However, the Examiner in this case did not comply by the instructions supplied in the MPEP in addressing claims that are affirmed-in-part following a Decision on Appeal by the Board of Patent Appeals and Interferences. It is Applicants' position that due to the failure of the Examiner to issue a communication with the form paragraph inserted above, Applicants were wrongfully denied an opportunity to incorporate the

subject matter of the affirmed dependent claims into independent form and thereby allow this application to proceed to allowance.

Accordingly, Applicants hereby respectfully requests removal of the Notice of Abandonment and issuance of a communication in compliance with MPEP §1214 so that Applicants may have the time and opportunity set by the MPEP to rewrite the affirmed claims in independent form to secure their right to a patent on the subject matter allowed by the Board of Patent Appeals and Interferences.

Respectfully submitted,

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